

SMOKING IN PUBLIC PLACES

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Lawrence Ordinance

OVERVIEW

Purpose – The public health purposes of protecting members of the public from smoke in public places and protecting workers from smoke in their workplaces.

Prohibitions - In General, the Lawrence Ordinance broadly prohibits:

1. 1. Smoking or permitting smoking in any enclosed public spaces (9-803);
and
2. 2. Smoking or permitting smoking in any enclosed place of employment (9-804).

Exceptions/Exclusions – Smoking is not prohibited (9-807):

1. In private residences not used as a child or adult care or health care facility (and, by virtue of other ordinance provisions, also not used as any other type of business open to the public);
2. In up to 25% of hotel and motel rooms rented to guests;
3. In retail tobacco stores;
4. In restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while such places are being used for private functions, but only while no contracted food or beverage service functions are taking place, including set-up, service and clean-up activities, and only when the room is not being used for exhibit activities (the apparent intent being to protect catering employees or viewers of exhibits);

5. In “Private Places,” defined as, “any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences or personal motor vehicles” (No structure used as a business open to the public, and no vehicle used as a commercial passenger vehicle can qualify under this definition);
6. In smoking break rooms within businesses that do not engage in direct sales or service to the public, if there is a comparable break room exclusively for non-smokers and if the smoking break rooms meet a series of specific requirements (which not many will meet), including area limitations, requirements relating to construction, ventilation and posting, and restrictions that no employee or vendor (or maintenance person) will be required to enter while smokers are present (Under the Lawrence model, the break rooms also have to be registered with the city, and must have existed before the effective date of the Ordinance, so it is basically a “grandfathering” provision).
7. In outdoor places of employment unless the employer has opted to prohibit smoking even in such outdoor spaces;

Affirmative Mandates – Owners, managers or persons otherwise in control of areas where smoking is prohibited (which would include public buildings and public transit vehicles) must post no-smoking signs, and in addition, employers must:

1. Adopt and maintain a policy providing that “smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas” (qualified breakrooms presumably could be excepted in the policy);
2. Communicate the policy to all employees within four weeks after the effective date of the Ordinance;
3. Provide a copy of the policy upon request to any existing or prospective employee; and
4. Provide a smoke-free workplace for all employees (effectively requiring the employer to enforce the policy).

Violations – It is a violation for persons subject to the affirmative mandates to fail to comply with them, or to allow smoking where it is prohibited. It is a violation for a person to smoke where smoking is prohibited.

Penalties – A fine up to \$100 for the first violation (by implication, the first violation within a one-year period), increasing to a maximum of \$200 for the second violation within a one-year period and \$300 for the third or subsequent violation within a one-year period.

Wichita Smoking Ordinance

District Advisory Boards Recommendations December 2007

The following is a summary of Board comment on this item.

DAB I: The Board made the following comments: 1) this was a freedom of choice issue and this should not be enforced by government; 2) a clear identification of the enforcer needs to be made, it should not be the Fire Chief; 3) Employers should have a choice and be able to make their own regulations regarding smoking in their establishments; 4) people should have a choice; and 5) protecting the public health is important but people should have choices and we should not be the enforcers. The community raised the following concerns: 1) some are in favor of the smoking ban; 2) noted there was no such thing as a smoking vs. non-smoking section in the same venue that is under the same ventilation system; 3) the ordinance should cover all work places; 4) people should have the freedom to make their own choice; and 5) this is a health issue.

Date of Action: December 3, 2007

DAB II: Date of Action: Will hear at January 7th DAB meeting.

DAB III: Date of Action: Will hear at January 9th DAB meeting.

DAB IV: The Board made the following comments: 1.) The proposed ban is a good idea. 2.) It is a free market and businesses should be allowed to decide whether they wish to allow smoking in their establishments. 3.) The smoking ban should be restrictive, but accommodating and should not be a blanket ban covering all types of locations. 4.) Concern that the smoking ban may get too restrictive (i.e. including apartment complexes) as California did. 5.) We should not have a ban, but we should put signs on the front of businesses to designate smoking and non-smoking facilities. **Date of Action:** December 5, 2007

DAB V: The majority of the DAB (9-1) supported a smoke free ordinance much like the City of Lawrence's Ordinance reads with the addition of smoke free entrances. DAB comments presented were those of dangers of 2nd hand smoke, health initiatives, personal feelings because of real life stories of the affects of smoking, the fact that there is no proof that business' is "hurt" by going smoke free, overwhelming evidence that the majority of the community polled is in support, no other city with smoke free ordinances have reported any negative impact, 29 other cities in Kansas have adopted smoke free ordinances. The one opposition to a smoke free ordinance was due to government controlling private business. 8 members of the public audience spoke in support, 1 in opposition. **Date of Action:** 12-03-2007

DAB VI: The Board had the following questions and comments: 1.) Should apartments be included in this ban? 2.) We must consider the rights of the business owner based on customer desire people would have the ability to decide which places to go. 3.) As a business owner, it is a right to hire a non-smoker. This is a public health issue. New York is very pro civil rights and they have passed a smoking ban and other states that have passed similar bans have seen an increase in productivity. 4.) This issue should be put to a vote of the people. 5.) The results of the survey conducted in support of a smoking ban are skewed. 6.) This is a public health issue and a lot of other health measures and implemented and regulated already and the survey results were compiled by professionals and are valid. Only 25% of Kansans smoke. **Date of Action:** December 3, 2007

ARTICLE 8. SMOKING IN PUBLIC PLACES

9-801 **PURPOSE.**

The purpose of this Article is to (1) improve and protect the public's health by eliminating smoking in public places and places of employment; (2) guarantee the right of nonsmokers to breathe smoke-free air; and (3) recognize that the need to breathe smoke-free air shall have priority over the choice to smoke. (Ord. 7782)

9-802 **DEFINITIONS.**

The following words and phrases, whenever used in this Article, shall be construed as defined in this section: (Ord. 7782, Ord. 7868)

(A) Business means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

(B) Employee means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

(C) Employer means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

(D) Enclosed area means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structures.

For the purposes of this Article, the following shall not be considered an enclosed area:

(1) Rooms or areas enclosed by walls or windows having neither a ceiling nor a roof and which are completely open to the elements and weather at all times.

(2) Rooms or areas, enclosed by walls or windows and a roof or ceiling, having an opening at least twenty percent (20%) of the total perimeter wall area completely and permanently open to the elements and weather.

(E) Food Service Establishment shall mean any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(F) Licensed Premises shall mean any premises where alcoholic liquor or cereal malt beverages, or both, by the individual drink as defined by K.S.A. Chapter 41, and amendments thereto, is served or provided for consumption or use on the premises with or without charge. Such term shall include drinking establishments, Class A Private Clubs, Class B Private Clubs, and cereal malt beverage retailers, all as defined by K.S.A. Chapter 41, and amendments thereto, and this Code.

(G) Place of Employment means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.

(H) Private Place means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences or personal motor vehicles. A privately owned business, open to the public, is not a “private place.”

(I) Public Place means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a “public place.”

(J) Retail Tobacco Store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(K) Service Line means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

(L) Smoking means possession of a cigarette, cigar, or pipe partially or wholly consisting of or containing burning vegetation, or possession of any other device containing burning vegetation that is used for the introduction of smoke from the burning vegetation into the human body. For the purposes of this definition, the term vegetation includes, but is not limited to, tobacco, but does not include any controlled substance listed in K.S.A. 65-4105 through K.S.A. 65-4113 inclusive, and amendments thereto. (Ord. 7927)

(M) Sports Arena means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(N) Wall means a side of a room, building or structure connecting the floor and ceiling or foundation and roof, including temporary, moveable, and retractable sides.

9-803

PROHIBITION OF SMOKING IN PUBLIC PLACES.

Smoking shall be prohibited in all enclosed public places within the City of Lawrence, including, but not limited to, the following places: (Ord. 7782)

(A) Elevators.

(B) Restrooms, lobbies, reception areas, hallways, and any other common-use areas.

(C) Buses, bus terminals, taxicabs, train stations, the airport, and other facilities and means of public transit under the authority of the City of Lawrence, as well as ticket, boarding, and waiting areas of public transit depots.

(D) Service lines.

(E) Retail stores.

(F) All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including, but not limited to, attorneys' offices, and other offices, banks, laundromats, hotels, and motels.

(G) Food service establishments and licensed premises, excluding areas of a food service establishment or licensed premises that are not enclosed such as patios, outdoor dining areas, and courtyards.

(H) Galleries, libraries, museums, and grounds.

(I) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke when the smoking is a part of a stage production.

(J) Sports arenas and convention halls, including bowling facilities.

(K) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City of Lawrence or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City of Lawrence.

(L) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.

(M) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(N) Polling places.

(O) Private clubs and fraternal organization facilities.

9-804 **PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.**
(Ord. 7782)

- (A) Smoking shall be prohibited in all enclosed places of employment within the City of Lawrence.
- (B) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- (C) Each employer having any enclosed place of employment located within the City of Lawrence shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas. (Ord. 7927)
- (D) The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this ordinance.
- (E) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

9-805 **ADDITIONAL DECLARATION OF NON-SMOKING ESTABLISHMENT.**

Notwithstanding any other provision of this Article, any owner, operator, manager or other person who controls any establishment described in this Article may declare that entire establishment as a non-smoking establishment. (Ord. 7782)

9-806 **APPLICATION OF ARTICLE TO CITY-OWNED FACILITIES.**

All enclosed facilities owned by the City of Lawrence shall be non-smoking at all times notwithstanding other provisions of this Article. (Ord. 7782)

9-807 **WHERE SMOKING IS NOT REGULATED: PRIVATE AND PUBLIC PLACES.**

Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the smoking restrictions of this Article: (Ord. 7782, Ord. 7868)

- (A) Private residences, except when used as a childcare, adult day care or health care facility;
- (B) No more than twenty-five percent (25%) of hotel and motel rooms rented to guests.
- (C) Retail tobacco stores.
- (D) Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while such places are being used for private functions except while contracted food or beverage service functions are taking place (including set-up, service and clean-up activities or when the room is used for exhibit activities).
- (E) Outdoor places of employment except those covered in Section 9-805 of this article.
- (F) Private places.

(G) Smoking break rooms in businesses that do not sell goods or services directly to the general public at the business site and which meet all of the following requirements:

- (1) The smoking break room is enclosed on all sides by solid, impermeable walls or windows extending from the floor to ceiling with self-closing doors; and
- (2) Access to the smoking break room is restricted to the employees and vendors of the facility; and
- (3) The smoking break room maintains a negative air pressure (meaning more air is exhausted from the room than is directly supplied by the heating, ventilation, and air conditioning (HVAC) system); and
- (4) The smoking break room's smoke-contaminated air is exhausted directly to the outdoors and is not returned to the HVAC system; and
- (5) The smoking break room and any equipment contained therein are maintained and serviced when the room is not occupied by smokers; and
- (6) The employer does not require employees or vendors to enter the smoking break room when it is occupied by smokers; and
- (7) The owner, manager or other person having control of such building or areas shall have a conspicuously posted sign clearly stating that the room is a smoking break room; and

- (8) A single smoking break room shall not be larger than 1500 square feet; and
- (9) Non-smoking employees and vendors of the business have access to a separate, enclosed, non-smoking break room accessible only to the employees and vendors of the business which is of equal or larger size and has amenities comparable to the smoking break room; and
- (10) The indoor smoking area was in existence on June 30, 2004; and
- (11) The business has registered the indoor smoking area with the Fire Prevention Division of the Lawrence-Fire Medical Department on registration forms provided by the Department and the Department has verified compliance with the provisions of this ordinance.

9-808 **POSTING OF SIGNS.**
 (Ord. 7782)

- (A) The owner, manager or other person having control of such building or other areas where smoking is prohibited by this Article shall have a conspicuously posted sign clearly stating that smoking is prohibited at each entrance and within the building or other areas where smoking is prohibited.
- (B) Such "No Smoking" signs shall have bold lettering of not less than one (1) inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).

9-809 **PUBLIC HEALTH EDUCATION: CITY-COUNTY HEALTH DEPARTMENT.**

The Lawrence-Douglas County Health Department shall promote the purposes and requirements of this ordinance to the public affected by it, and guide owners, operators and managers in their compliance with it. Such promotion may include publication of a brochure for affected businesses and individuals explaining the provisions of this Article. (Ord. 7782)

9-810 **ENFORCEMENT.**
(Ord. 7782)

- (A) The Fire Chief or his or her designated agent shall be responsible for enforcing the provisions of this Article within the City, but nothing in this section shall be interpreted to prohibit any other person who would otherwise be lawfully entitled to enforce the provisions of this Article from taking enforcement action under this Article. (Ord. 7927)

- (B) Notice of the provisions set forth in this Article shall be given to all applicants for a City retail liquor or drinking establishment license. (Ord. 7927)

- (C) Any person may register a complaint under this Article to initiate enforcement with the Fire Chief.

(D) The Lawrence-Douglas County Fire & Medical Department, the Lawrence Police Department, the Lawrence-Douglas County Health Department, and the Codes Enforcement Division of the Department of Neighborhood Resources Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this Article.

(E) Any owner, manager, operator or employee of any premises regulated by this Article shall be responsible for informing persons violating this Article of the provisions through appropriate signage. (Ord. 7927)

9-811 **NON-RETALIATION.**

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke free environment afforded by this Article. (Ord. 7782)

VIOLATIONS AND PENALTIES.

(A) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to fail to comply with all of its provisions. (Ord. 7927)

(B) It shall be unlawful for any person who owns, manages, operates or otherwise controls any premises subject to regulation under this Article to allow smoking to occur where prohibited by this Article. Any such person allows smoking to occur under this section if he or she: (Ord. 7927)

- 1. has knowledge that smoking is occurring, and;
- 2. acquiesces to the smoking under the totality of the circumstances.

(C) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article. (Ord. 7927)

(D) Any person who violates any provision of this Article shall be guilty of a misdemeanor, punishable by: (Ord. 7927)

- 1. A fine not exceeding One Hundred Dollars (\$100.00) for the first violation.
- 2. A fine not exceeding Two Hundred Dollars (\$200.00) for a second violation within a one (1) year period of the first violation.
- 3. A fine not exceeding Five Hundred Dollars (\$500.00) for a third or subsequent violation within a one (1) year period of the first violation.
- 4. For the purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.

9-813 **OTHER APPLICABLE LAWS.**

This Article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 7782)

9-814 **SEVERABILITY.**

If any provision, clause, sentence or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable. (Ord. 7782)